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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,850	05/29/2001	Robert Gary	10010459-1	8299

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EXAMINER

TIV, BACKHEAN

ART UNIT PAPER NUMBER

2151

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/867,850

Applicant(s)

GARY, ROBERT

Examiner

Backhean Tiv

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 6, 7, 11, 14, 19, 21, 22, 25, 29-32, 34, 41, 44, 55, 59 and 65-70 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 8-10, 12, 13, 15-18, 20, 23, 24, 26-28, 33, 35-40, 42, 43, 45-54, 56-58, 60-64, 71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 11, 14, 19, 21, 22, 25, 29-32, 34, 41, 44, 59, 55 and 65-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Claims 1,2,4,6,7,11,14,19,21,22,25,29-32,34,41,44,55,59,65-70 are pending in this application. Claims 3,5,8-10,12,13,15-18,20,23,24,26-28,33,35-40,42,43,45-54,56-58,60-64,71 have been cancelled. This is a response to the RCE filed on 8/24/05.

Claim Objections

Claim 4 is objected to because of the following informalities:

As per claim 4, recites "Small Network Management Protocol(SNMP)", it should read, "Simple Network Management Protocol(SNMP)".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,6,7,11,14,19,21,22,25,29-32,34,41,44,55,59, 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,269,398 issued to Leong et al.(Leong) in view of US Patent 6,678,250 issued to Grabelsky et al.(Grabelsky).

As per claim 1,19,31, Leong teaches a system for determining if at least one gateway is at a pre-selected processing capacity(Abstract), said system comprising:

a usage management system communicatively coupled to said at least one gateway, wherein said at least one gateway is operable to communicate said amount of processing performed to said usage management systems(Abstract, Fig.1-20, col.3, lines 63-col.4, lines 34) and

a management system capable of determining if said at least one gateway is at said pre-selected processing capacity based on the measured said amount of processing performed(Abstract, Fig.1-20, col.3, lines 63-col.4, lines 34).

Leong does not explicitly teach said at least one gateway being responsible for managing one or more network elements, said at least one gateway communicatively coupled with one or more network elements; said at least one gateway measuring an amount of processing usage performed said by said at least one gateway.

Grabelsky teaches said at least one gateway being responsible for managing one or more network elements, said at least one gateway communicatively coupled with one or more network elements(Abstract, col.2, lines 8-25, 39-64); said at least one gateway measuring an amount of processing usage performed said by said at least one gateway(Abstract, col.2, lines 8-25, 39-64).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teaching of Leong to have at least one gateway being responsible for managing one or more network elements, said at least one gateway communicatively coupled with one or more network elements; said at least one gateway measuring an amount of processing usage performed said by said at least one gateway

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as taught by Grabelsky in order to evaluate performance of the network(Grabelsky, col.1, lines 8-13).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teaching of Leong and Grabelsky to provide a system to monitor and evaluate the overall performance of a packet-based network(Grabelsky, col.1, lines 8-13).

As per claim 2, 21wherein said amount of processing performed includes an amount of message handling(Grabelsky, col.2, lines 8-25,39-64). Motivation to combine set forth in claim 1.

As per claim 4, the system of claim 2 wherein said at least one gateway includes a Small Network Management Protocol (SNMP) gateway responsible for managing one or more SNMP network elements, and wherein said amount of message handling includes handling of SNMP messages(Leong, col7, lines 49-60).

As per claim 6, 32,59, wherein said at least one gateway includes code executable to track said measured amount of processing performed by said at least one gateway(Grabelsky, col.2, lines 8-25,39-64). Motivation to combine set forth in claim 1.

As per claim 7,11,22,41, wherein said tracking step comprises the steps of: executing software code by each of said one or more gateways to compute said amount of processing performed, said software code including code implemented within an Application Program Interface (API)(Leong, Figs.1-14); invoking, by said one or more gateways, said API to maintain a count of a type of processing when said type of

processing occurs within said one or more gateway)(Leong, Figs.1-14); tracking an amount of different types of processing including handling of different types of messages from said one or more network elements(Grabelsky, col.2, lines 8-25,41-64) and executing code, in each of said one or more gateways, to increment a count maintained for one of said different types of processing responsive to an occurrence of said one type of processing(Leong, Figs.1-14). Motivation to combine set forth in claim 1.

As per claim 14,29,30 wherein said usage management system is communicatively coupled to a plurality of gateways and is operable to poll said at least one gateway for said amount of processing to determine the measured amount of processing and to compile the measured amount of processing into a file and provide said file to a recipient (Leong, Fig.12-20, col.12, lines 13-67).

As per claim 25, the method of claim 22 wherein said invoking step comprises the step of: passing a descriptor of said type of processing usage to said API(Leong, Fig.12-20, col.12, lines 13-67).

As per claim 34, the gateway of claim 31 wherein said tracking means includes software code implemented within an Application Program Interface(API) executable to increment a first count to track said amount of processing performed(Leong, Figs.1-14); wherein said API includes functionality that can be invoked to maintain a second count of one or more types of processing(Leong, Figs.1-14); wherein said software code, upon occurrence of a type of processing, invokes said functionality of said API to increment said second count for said one or more types of processing(Leong, Figs.1-

14); and wherein said software code invokes said functionality by passing a descriptor of said type of processing to said API, and wherein said API maintains a third count for said descriptor(Leong, Figs.1-14).

As per claim 44, the gateway of claim 31 further comprising communicative coupling to a usage management system, wherein said gateway is operable to communicate said amount of processing performed usage to said usage management system(Leong, Figs.1-14).

As per claim 55, the system of claim 1 wherein said usage management system is implemented on a common platform with said management system(Leong, col.3, lines 63-col.4, lines 30).

As per claim 65, the method of claim 19 wherein said usage management system is communicatively coupled to a plurality of said one or more gateways, said method further comprising the step of: said usage management system compiling usage information received from said plurality of said one or more gateways(Leong, Figs.1-14).

As per claim 66, the method of claim 65 further comprising the step of said usage management system electronically communicating compiled usage information to a recipient(Leong, Figs.1-14).

As per claim 67, the method of claim 19 further comprising: said usage management system electronically communicating said amount of processing performed received from said least one or more gateways to a recipient(Leong, Figs.1-14).

Claims 68-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,269,398 issued to Leong et al.(Leong) in view of US Patent 6,678,250 issued to Grabelsky et al.(Grabelsky) in further view of US Patent 6,775,267 issued to Kung et al. (Kung).

Leong in view of Grabelsky does not explicitly teach, as per claim 68-70 usage management system charges a user for said at least one gateway a fee based on said amount of processing performed, however Kung teaches usage management system charges a user for said at least one gateway a fee based on said amount of processing performed (Fig.7c, col.5, lines 44-63, col.4, lines 15-23).

Therefore it would have been obvious to one ordinary skill in the art to modify the method of Leong in view of Grabelsky to explicitly add usage management system charges a user for said at least one gateway a fee based on said amount of processing performed as taught by Kung in order to bill a variable bit rate communication(Kung, col.2, lines 30-31).

One skilled in the art would have been motivated to combine Leong, Grabelsky, and Kung in order to provide a method to a multi-network access and least cost routing among broadband network(Kung, col.1, lines 9-15).

Response to Arguments

Applicant's arguments with respect to claims 1,2,4,6,7,11,14,19,21,22,25,29-32,34,41,44,55,49,65-70 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

US Patent 5,583,860 issued to Iwakawa et al.

US Patent 5,940,376 issued to Yanacek et al.

US Patent 6,188,761 issued to Dickerman et al.

US Publication 2003/0009543 issued to Gupta

US Patent 6,513,129 issued to Tentij et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BT

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10/30/05


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